IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 28920 of 2005(P)

AGAINST THE ORDER IN IA 1567 2005 IN
OS.88/2002 of MUNSIFF COURT, TIRUR
.....

PETITIONER:

BAPPUTTY, S/O.THENUTTY HAJI,
AGED 63 YEARS, P.O.ANANTHAVUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN
SRI.K.MOHAMMED FAISAL NAHA

RESPONDENT:

ABDU HAJI, S/O.THENUTTY HAJI,
MATTATHUVALAPPIL HOUSE, P.O.ANANTHAVUR,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 28920 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PETITION IA NO.1567/05 IN OS 88/02 WITH ITS AFFIDAVIT, DATED 30.07.05, BEFORE THE MUNSIFF'S COURT, TIRUR.

EXT.P2 : TRUE COPY OF THE COMMISSIONR'S PLAN WITH REPORT SUBMITTED IN OS 88/02 OF THE MUNSIFF'S COURT, TIRUR.

EXT.P3 : TRUE COPY OF THE ORDER IN IA 1567/05 IN OS 88/02 DATED 8.8.05 OF THE MUNSIFF'S COURT, TIRUR.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28920 OF 2005

Dated this the 23rd day of August, 2007

JUDGMENT

Ext.P3 order dismissing an application filed by the plaintiff in the suit for remitting an advocate commissioner's report for the reasons stated in the objections filed by him to the report is under challenge in this Writ Petition under Article 227 of the Constitution.

2. Heard Sri.K.Ramachandran, learned counsel for the petitioner who drew my attention to the judgment of a Division Bench of this Court in **Sadanandan V.Sudarsanan** (1982 KLT SN page 29) and submitted that in the instant case, the learned Munsiff has defeated the very purpose of the special list system which was introduced for ensuring that only those cases wherein all pre-trial steps have already been completed and are actually ripe for trial are taken up and disposed of without delay. Under the impugned order the learned Munsiff has observed that no explanation is forthcoming as to why the petitioner did not file objections to the Commissioner's Report on time and has held that the petition which is a highly belated one has been filed only for protracting the suit after the same was special listed for trial.

3. Sri.K.Ramachandran pointed out that the suit stood posted for pre-trial steps peremptorily to 15.06.05 and on that day what the learned

Munsiff did was to special list the suit for trial posting the same to 17.10.05. Learned counsel submitted that within 18 days of 15.06.05 the petitioner filed the present IA (IA No.1567 of 2005), seeking remittance of the Commissioner's report and it was not at all proper on the part of the learned Munsiff to have dismissed that application on 08.08.05 which is more than two months prior to the day the case actually stood posted in the special list for trial. Mr.Ramachandran submitted that a draft special list was not published and on account of that opportunity had been denied to the plaintiff-petitioner for requesting the court not to include the suit in the final list before the petitioner could file objections to the Commission Report as well as the application for remittance of the Commissioner's Report.

4. I do notice some force in the submissions of Mr.Ramachandran that the directions of the Division Bench in **Sadanandan**'s case (supra) were not followed by the learned Munsiff. However, I am not inclined to allow the applications straightaway. Though belatedly, objections were filed by the petitioner to the Commissioner's Report at least two month's prior to the day on which the suit stood special listed for trial, I set aside Ext.P3 and direct the learned Munsiff to dispose of the IA afresh in the light of the objections filed to the Commissioner's Report and also the grounds raised in the affidavit in support of that IA. The prejudice which

has been caused to the petitioner due to the non-publication of the draft special list will also be kept in mind by the learned Munsiff. Fresh orders as directed above will be passed by the learned Munsiff at the earliest and at any rate within three weeks of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

PIUS C. KURIAKOSE, JUDGE

btt